

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL SHANE THORSON,

Plaintiff,

v.

COUNTY OF KLINKITAT,
WASHINGTON; JOE RIGGERS,
SERGEANT KLINKITAT COUNTY
SHERIFF'S OFFICE; ERIK
ANDERSON, KLINKITAT
COUNTYUNDER-SHERIFF; and
JOHN and JANE DOE, EMPLOYEE-
AGENTS and FORMER EMPLOYEE-
AGENTS OF KLINKITAT COUNTY,

Defendants.

NO: CV-10-5137-RMP

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

BACKGROUND

This matter comes before the Court on Plaintiff Michael Thorson's motion for summary judgment, ECF No. 37. Mr. Thorson seeks judgment in his favor, pursuant to Fed. R. Civ. P. 56, on his three claims: (1) violation of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. §

1 4301 *et seq.*, based on disparate treatment arising out of his military service; (2)
2 violation of the Washington Law Against Discrimination (“WLAD”), chapter
3 49.60 RCW, based on a hostile work environment arising out of Mr. Thorson’s
4 military status; and (3) violation of the Washington Industrial Insurance Act,
5 chapter 51 RCW. *See* ECF No. 27 (Second Amended Complaint).

6 Having reviewed the parties’ submissions, the remaining file in this matter,
7 and the relevant law, the Court is fully informed.

8 **Facts**

9 The following facts are undisputed unless otherwise noted. Plaintiff Shane
10 Thorson applied in September 2007 for a position as deputy sheriff with the
11 Klickitat County, Washington, Sheriff’s Office (the “County”). Mr. Thorson
12 indicated on the Personal History and Background Questionnaire that he was “in
13 the process of changing” from enrollment in the Oregon National Guard to the
14 Washington National Guard. ECF No. 44-3 at 119. The County hired Mr.
15 Thorson in October 2007. ECF No. 39 at 2. At the time he was hired as a
16 weekend deputy sheriff, Mr. Thorson still was a member of the Oregon Army
17 National Guard. ECF No. 39 at 2.

1 Mr. Thorson was supervised by Defendant Sergeant Joe Riggers and by
2 Defendant Undersheriff Erik Anderson.¹ ECF Nos. 44-1, 44-5. In December
3 2007, Mr. Thorson informed Mr. Riggers that he was required to fulfill a weekend
4 drill requirement for the Oregon Army National Guard. Mr. Thorson recalls that
5 he understood from his conversation with Mr. Riggers that Mr. Riggers ordered
6 him to quit the Oregon Army National Guard. ECF No. 39 at 3.

7 Mr. Riggers recalls the conversation differently. Mr. Riggers stated in his
8 deposition that his initial reaction during the December 2007 was confusion
9 because he recalls Mr. Thorson telling him prior to December 2007 that he had
10 turned in his paperwork requesting release from the Oregon Army National Guard.
11 ECF No. 44-5 at 13-14. Mr. Riggers states that Mr. Thorson told him that they
12 must have lost his paperwork, and Mr. Riggers wanted to know whether there was
13 anything that Mr. Thorson could do about that. ECF No. 44-5 at 14.

14 Mr. Thorson asserts that sometime in or after December 2007, he completed
15 the process of leaving the Oregon Army National Guard. ECF No. 39 at 3.

17
18 ¹ When referring to the Defendants collectively, the Court refers simply to the
19 “County” because the parties do not dispute whether the individual Defendants
20 were acting in their official capacities.

1 In February 2008, Mr. Thorson injured a finger during law enforcement
2 training. Starting in March 2008, Mr. Thorson took unpaid industrial injury leave
3 from his work for the County. ECF No. 44-3 at 46. In a letter dated March 14,
4 2008, and stamped received by the County on March 24, 2008, a physician wrote
5 that Mr. Thorson “need[ed] to be off work until April 1, 2008, unless extended by
6 surgery or other treatment.” ECF No. 44-3 at 38. In a document that is dated
7 March 24, 2008, and stamped received by the County on March 28, 2008, a
8 different physician recommended that Mr. Thorson continue to refrain from work
9 from April 1, 2008, until April 17, 2008, to allow his injury to recover. ECF No.
10 44-3 at 38.

11 As asserted by Mr. Thorson, he received, to his own surprise, a mobilization
12 order on approximately April 23, 2008. ECF No. 39 at 5. In the mobilization
13 order, dated March 19, 2008, the Department of Defense informed members of the
14 Washington Army National Guard’s 81st Heavy Brigade Combat Team (“HBCT”)
15 that the unit would be deployed to Iraq for twelve months in August 2008. ECF
16 No. 44-4 at 5. Mr. Thorson offers by way of explanation that, although he “had
17 instructed the people at the Oregon Army Guard [sic] to let [him] go,” the
18 “message never got to the Washington Army National Guard and [his] transfer
19 paperwork switching [him] to the Washington Army National Guard never got
20 turned off.” ECF No. 39 at 5.

1 On April 23, 2008, Mr. Thorson sent by certified mail to Mr. Anderson an
2 envelope containing the following documents: (1) an undated, handwritten note
3 from Mr. Thorson to Mr. Anderson stating, "Here is the paperwork I said I would
4 send you once I got it. I will provide you with more information as I get it."; (2) a
5 notice from the Washington Army National Guard dated January 16, 2008, setting
6 an annual training for a particular unit for July 12-26, 3008; (3) the mobilization
7 order dated March 19, 2008; (4) a notice from the Washington Army National
8 Guard dated April 7, 2008, setting pre-mobilization training from July 27, 2008,
9 until August 8, 2008; (5) a document from a physician's office indicating Mr.
10 Thorson had an appointment scheduled for March 15, 2008, at 9:00 a.m.; and (6) a
11 slip of paper identifying Mr. Thorson as a "patient" of "Handworks Northwest,
12 PLLC," in Richland, Washington, and indicating that Mr. Thorson had an
13 appointment scheduled for May 15, 2008, at 3:00 p.m. ECF No. 44-4 at 1-8. A
14 stamp indicates that the County received the mailing on April 29, 2008, at 8:56
15 a.m. ECF No. 44-4 at 1.

16 Mr. Thorson called Mr. Anderson on April 28, 2008, "to inform him that
17 [Mr. Thorson] was being deployed to Iraq." The conversation was tense, and the
18 parties offer somewhat conflicting accounts of the content of the conversation and
19 the reason for the tension between Mr. Thorson and Mr. Anderson. Mr. Thorson
20 contends that Mr. Anderson was angered by Mr. Thorson's military service while

1 the County maintains that Mr. Anderson was surprised that Mr. Thorson had given
2 Mr. Anderson the impression that Mr. Thorson had no further military commitment
3 and had not provided justification for not returning to work following his work
4 injury. It is undisputed, though, that at the conclusion of the conversation Mr.
5 Anderson conveyed to Mr. Thorson his expectation that Mr. Thorson return to
6 work for the County on “light duty” until Mr. Thorson was required to report for
7 military training and/or deployment, unless Mr. Thorson provided a physician’s
8 note stating that he was unable to do light duty. *See, e.g.*, ECF No. 44-4 at 9-11.

9 A string of emails beginning on April 28, 2008, and ending on May 6, 2008,
10 contain statements by Mr. Anderson that the County “had a hard time getting ahold
11 of [Mr. Thorson]” and “advising,” “suggesting,” and otherwise requesting that Mr.
12 Thorson call Mr. Anderson. ECF No. 44-4 at 9-11, 16, 28-29. At some point
13 during this time period, Mr. Thorson faxed a physician’s note, dated April 21,
14 2008, to the County recommending that Mr. Thorson not return to work before
15 May 15, 2008. ECF No. 44-4 at 14. Mr. Thorson somewhat indirectly requested a
16 leave of absence beginning on May 15, 2008, and ending at the completion of his
17 active duty military service. ECF No. 44-4 at 11.²

18
19 ² Mr. Thorson stated in a May 1, 2008, email: “I look at all the
20 [training dates for the National Guard] and wonder if I can ask for a
leave of absence beginning from my release from the doctor until
when my orders run out. It would give me time in between all the
dates to visit my family and get everything prepared for me to deploy.

1 Mr. Anderson responded to Mr. Thorson's initial leave of absence request by
2 requiring Mr. Thorson to submit a separate letter "that clearly asks for the dates
3 requested and the reason for it." ECF No. 44-4 at 10. Mr. Anderson continued,
4 "At this point I would be reluctant to grant any non-mandated leave." ECF No. 44-
5 4 at 10.

6 On the evening of May 5, 2008, Mr. Thorson sent an email to Mr. Anderson
7 with an attached letter requesting a leave of absence "from May 15th, 2008, until I
8 return from Iraq" and expressing concerns that the County would fire him before
9 he was deployed. ECF No. 44-4 at 25-27. Mr. Anderson responded on May 6,
10 2008, with an email addressing point-by-point Mr. Thorson's letter and stating, as
11 follows:

12 Shane, you are looking at discipline. This is not because of your
13 injury or the National Guard, this is because of your insubordination
14 for refusing to communicate with us as directed over and over.
15 I will be emailing and mailing by post a letter to you today, advising
16 of a pre-disciplinary meeting to be held, giving you an opportunity to
17 respond. I will also send a copy to the Union. Before you respond, be
18 advised that you have the right to Union representation regarding this
19 specific matter.

20 ECF No. 44-4 at 28-29.

Plus I don't know how I would fit on [sic] a work schedule with all
the dates for training and include the days that I have drill. So I guess
what I am asking is for a leave of absence" ECF No. 44-4 at 11
(ellipsis in original).

1 On May 7, 2008, Mr. Anderson emailed and mailed a letter informing Mr.
2 Thorson of a predisciplinary meeting on Thursday, May 15, 2008, at 1:00 p.m.
3 ECF No. 44-4 at 30-33. On May 14, 2008, Mr. Thorson requested, by e-mail, an
4 alternative date for the pre-disciplinary hearing to accommodate his medical
5 appointments. ECF No. 44-4 at 34. Mr. Anderson declined to reschedule the
6 meeting. ECF No. 44-4 at 34. Mr. Thorson did not attend the meeting and was
7 subsequently fired.

8 The Klickitat County Collective Bargaining Agreement (“CBA”) defines
9 “Insubordination” as follows:

10 Employees shall promptly obey all lawful orders issued by a
11 supervising officer, including relayed orders. Failure to acknowledge
12 the authority of any supervisor by obvious disrespect or by disputing
13 his lawful orders shall be deemed insubordination.

14 ECF No. 44-4 at 183.

15 ANALYSIS

16 Summary Judgment Standard

17 Summary judgment is appropriate “if the pleadings, depositions, answers to
18 interrogatories, and admissions on file, together with the affidavits, if any, show
19 that there is no genuine issue as to any material fact and that the moving party is
20 entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In determining
whether there are genuine issues of material fact, the court must view the evidence

1 in the light most favorable to the nonmoving party. *Johnson v. Lucent Techs., Inc.*,
2 653 F.3d 1000, 1005 (9th Cir. 2011).

3 Summary judgment is inappropriate where sufficient evidence supports the
4 claimed factual dispute or where different ultimate inferences may reasonably be
5 drawn from the undisputed facts. *Miller v. Glenn Miller Productions, Inc.*, 454
6 F.3d 975, 988 (9th Cir. 2006). The moving party bears the initial burden of
7 demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v.*
8 *Catrett*, 477 U.S. 317, 323 (1986). The moving party must demonstrate to the
9 Court that there is an absence of evidence to support the non-moving party's case.
10 *See Celotex Corp.*, 477 U.S. at 325. The burden then shifts to the non-moving
11 party to “set out ‘specific facts showing a genuine issue for trial.’” *Celotex Corp.*,
12 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The evidence supporting summary
13 judgment must be admissible. Fed. R. Civ. P. 56(e). Furthermore, the court will
14 not presume missing facts, and non-specific facts in affidavits are not sufficient to
15 support or undermine a claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89
16 (1990).

17 Plaintiff’s Objections, ECF No. 57, to Defendant’s Declarations at ECF Nos.
18 52, 53

19 As a preliminary matter, the Court notes that Mr. Thorson objects to portions
20 of the declarations submitted by the County with its response to the summary

1 judgment motion. The Court need not address Mr. Thorson's objections at this
2 time because the Court relies only on Plaintiff's submitted declarations and
3 exhibits for purposes of this Order.

4 **USERRA Claim**

5 USERRA, 38 U.S.C. § 4301 *et seq.*, prohibits discrimination against an
6 employee based on his military service. 38 U.S.C. §4311(a). A defendant is liable
7 under USERRA when "a supervisor performs an act motivated by antimilitary
8 animus that is *intended* by the supervisor to cause an adverse employment action,
9 and . . . that act is a proximate cause of the ultimate employment action"
10 *Staub v. Proctor Hosp.*, 131 S.Ct. 1186, 1194 (2011) (emphasis in original). Under
11 USERRA, the employee plaintiff bears the initial burden of proving, by a
12 preponderance of the evidence, that the employee's military status was at least a
13 motivating factor or substantial factor in the employer's adverse employment
14 action. *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002). The
15 burden then shifts to the employer to prove, as an affirmative defense, that it
16 "would have taken the same action without regard to the employee's protected
17 status." *Leisek*, 278 F.3d at 899.

18 Plaintiff argues that when the County asked for two phone calls from Mr.
19 Thorson, it was creating a pretext for his termination and that all Mr. Thorson
20

1 needed to do was meet the notice requirements of USERRA in order to trigger all
2 of USERRA's protections.

3 Plaintiff asserts that he has offered six pieces of direct evidence that his
4 military service was a motivating factor in his termination. First, Mr. Thorson
5 points the Court to a "Notice to Employer – Claimant's Separation Statement" that
6 the County returned to the Washington State employment insurance benefits
7 department in approximately September or October 2010. In response, an
8 administrative assistant for the County, Mike Lummio, signed a form that indicated
9 that Mr. Thorson had been discharged for "insubordination" and "inexcusable
10 absences" and further stated:

11 Mr. Thorson was told by his supervisor, Joe Riggers [sic] in
12 December 2007 that Mr. Thorson was to quit the Oregon Army
13 National Guard because of Mr. Thorson's weekend sheriff
14 requirements. Mr. Thorson did not do so. Mr. Thorson was to attend
15 a disciplinary hearing on May 15, 2008 [sic] at 1:00 PM and failed to
16 show.

17 ECF No. 44-5 at 36.³

18 ³ In a declaration by the administrative assistant who signed the form, Mike
19 Lummio, Mr. Lummio stated that "[t]he purpose of me signing [the form] was
20 purely ministerial," and the form "was completed when it came to me." ECF No.
43 at 2-3.

1 However, this explanation, recorded over two years after Plaintiff's
2 termination by someone other than the individual who signed the form and who
3 may or may not have had personal knowledge of the circumstances surrounding
4 the termination, conflicts with the County's explanation on the same employment
5 insurance form in May 2008 and July 2008 in which a different administrative
6 assistant for the County indicated that Plaintiff was terminated for "non
7 communication [sic] by not returning phone calls[,] failure to arrange light duty[,]
8 failure to appear for disciplinary meeting (5/15/08 @ 1:00 PM)[.]" ECF No. 44-5
9 at 31-34.

10 Secondly, Plaintiff asserts that the alleged December 2007 order by Mr.
11 Riggers to quit the military itself constitutes direct evidence that Mr. Thorson's
12 military status was a motivating factor in the County's decision to terminate him.
13 However, statements in the record by Mr. Thorson and Mr. Riggers directly
14 conflict as to whether Mr. Riggers ever ordered Mr. Thorson to leave the National
15 Guard, as Mr. Thorson claims. *Compare* ECF No. 39 at 3 (Declaration of Mr.
16 Thorson) *with* ECF No. 44-5 at 15-16, 26 (Deposition of Mr. Riggers).

17 Third, Mr. Thorson argues that Mr. Anderson admitted that he took Mr.
18 Thorson's military service into account when he ordered Mr. Thorson to conduct
19 light duty. However, Mr. Anderson's statement, affirming that Mr. Anderson took
20 "Mr. Thorson's military service into account when [Mr. Anderson] requested that

1 he do light duty,” *see* ECF No. 44-2 at 1, is not direct evidence of an illegal
2 motivation in firing Mr. Thorson when viewed in the light most favorable to the
3 County. Rather, it could indicate a mere inquiry regarding whether, if Mr. Thorson
4 was physically fit enough to deploy, he also was physically able to return to work
5 for the County before his departure date.

6 Having already identified several material questions of fact that necessitate
7 trial in this case, the Court proceeds no further in examining Plaintiff’s arguments
8 regarding direct and indirect evidence supporting summary judgment. Instead, the
9 Court finds that, viewing the evidence in the light most favorable to the County,
10 there remains a question of fact as to whether Mr. Thorson’s military service was a
11 substantial or a motivating factor in the County’s decision to terminate Mr.
12 Thorson’s employment.

13 **WLAD Claim**

14 The WLAD protects, in part, a person’s right to employment free from
15 discrimination based on “race, creed, color, national origin, sex, honorably
16 discharged veteran or military status, sexual orientation, or the presence of any
17 sensory, mental, or physical disability.” RCW 49.60.030; *see also* RCW 38.40.050
18 (“No member of the organized militia of Washington shall be discharged by his or
19 her employer by reason of the performance of any military duties upon which he or
20 she may be ordered.”).

1 “To establish a claim for hostile work environment, a plaintiff must prove
2 that the harassment (1) was unwelcome, (2) was because [he] is a member of a
3 protected class, (3) affected the terms and conditions of [his] employment, and (4)
4 was imputable to [his] employer.” *Loeffelholz v. University of Washington*, 162
5 Wn. App. 360 (Wash. App. Div. 1 2011) (citing *Antonius v. King County*, 153
6 Wn.2d 256 (2004)).

7 Another statute, former RCW 38.40.060 (2007)⁴ (Military leave for public
8 employees), provided, at the time of the events at issue in this case:

9 Every officer and employee of the state or of any county, city, or other
10 political subdivision thereof who is a member of the Washington
11 national guard or of the army, navy, air force, coast guard, or marine
12 corps reserve of the United States, or of any organized reserve or
13 armed forces of the United States shall be entitled to and shall be
14 granted military leave of absence from such employment for a period
15 not exceeding fifteen days during each year beginning October 1st and
16 ending the following September 30th. Such leave shall be granted in
order that the person may report for active duty, when called, or take
part in active training duty in such manner and at such time as he or
she may be ordered to active duty or active training duty. Such
military leave of absence shall be in addition to any vacation or sick
leave to which the officer or employee might otherwise be entitled,
and shall not involve any loss of efficiency rating, privileges, or pay.

17 ⁴ The version of the statute in effect in May 2008 provided for 15 days of annual
18 paid military leave for public employees. An amendment that went into effect on
19 June 12, 2008, extended the amount of leave to 21 days. 2008 Washington
20 Advance Legislative Service Ch. 71, § 5.

1 During the period of military leave, the officer or employee shall
2 receive from the state, or the county, city, or other political
subdivision, his or her normal pay.

3 Plaintiff bases his claim that he was subjected to a hostile work environment
4 on: (1) being denied 15 days of requested leave “so he could enjoy 15 days with
5 his family before mobilizing on June 2, 2008,” ECF no. 58 at 13 (internal citation
6 omitted); and (2) being asked to quit the Oregon Army National Guard.

7 As discussed above, there is a material question of fact as to whether Mr.
8 Thorson was asked by his County supervisor to quit the Oregon Army National
9 Guard. *Compare* ECF No. 39 at 3 (Declaration of Mr. Thorson) *with* ECF No. 44-
10 5 at 15-17, 26 (Deposition of Mr. Riggers).

11 As for Mr. Thorson’s claim that denial of 15 days’ military leave under
12 RCW 38.40.060 (2007) constituted harassment that affected the terms and
13 conditions of his employment, the Court finds a material question of fact and gaps
14 in Mr. Thorson’s legal argument that preclude judgment in his favor on that issue
15 at this time. Mr. Thorson asked for a leave of absence beginning on May 15, 2008,
16 and continuing until the end of his active duty in the military. The Court cannot
17 determine based on the exhibits offered by Plaintiff for purposes of summary
18 judgment that Mr. Thorson had provided any proof to the County that his “active
19 duty” military status would commence on May 15, 2008. Rather, in the documents
20 that Mr. Thorson sent to the County on April 23, 2008, it appears that he was

1 scheduled for training for July 12-26, 2008, ECF No. 44-4 at 4, that active duty for
2 purposes of the mobilization and deployment would begin on August 18, 2008,
3 ECF No. 44-4 at 5, and that an annual training would occur from July 27, 2008,
4 until August 8, 2008, ECF No. 44-4 at 6.

5 The letter explaining the deployment to civilian employers, dated May 1,
6 2008, which Mr. Thorson appears to have mailed to the County on May 1, 2008,
7 and faxed on May 5, 2008, ECF No. 44-4 at 18, does not give a definite date for
8 commencement of active duty. ECF No. 44-4 at 19. Rather, it explains, “To
9 further prepare for this mission, your citizen soldier may be ordered to active duty,
10 *as early as 2 June 2008.*” ECF No. 44-4 at 19 (emphasis added). Therefore,
11 viewing the evidence in the light most favorable to the County, there remains a
12 question of fact as to when the County was aware of the date of Mr. Thorson’s
13 active duty start date and what that active duty start date actually was.

14 Mr. Thorson’s theory of his WLAD claim, with respect to the County’s
15 denial of his request for a leave of absence starting on May 15, 2008, lacks legal
16 coherence. Specifically, Mr. Thorson argues that he was entitled to leave under
17 RCW 38.40.060 starting on May 15, 2008, to allow him to “enjoy 15 days with his
18 family,” ECF No. 46 at 7-8. However, RCW 38.40.060 (2007) provided for paid
19 time off “in order that the person may report for active duty, when called, or take
20 part in active training duty in such manner and at such time as he or she may be

1 ordered to active duty or active training duty.” Moreover, it is not immediately
2 clear that denial of leave constitutes harassment, and Mr. Thorson does not offer
3 caselaw to support his argument on that count.

4 **Industrial Insurance Act Claim**

5 Plaintiff argues that Defendant violated the Washington Industrial Insurance
6 Act, specifically RCW 51.48.025, by failing “to send Mr. Thorson’s physician a
7 description of the light duty defendants wanted Mr. Thorson to conduct although
8 such notice was required under RCW 51.32.090(4),” failing “to follow the
9 procedure prescribed by RCW 51.32.090(4)(d) when it became apparent that the
10 light duty defendants ordered Mr. Thorson to conduct conflicted with Mr.
11 Thorson’s National Guard obligation,” and “requiring Mr. Thorson to attend the
12 pre-disciplinary hearing even though Mr. Thorson was not cleared to return to
13 work.” ECF No. 27 at 10-11 (Second Amended Complaint).

14 Under RCW 51.48.025, an employer may not discharge or in any manner
15 discriminate against any employee because the employee has filed, or
16 communicated to the employer an intent to file a claim for workers' compensation
17 benefits. To succeed on a claim for wrongful discharge in retaliation for pursuing
18 workers’ compensation benefits, an employee must show that: (1) he exercised or
19 communicated to the employer an intention to exercise a statutory right to pursue
20 workers’ compensation benefits under Title 51 RCW; (2) was discharged; and (3)

1 there is a causal connection between the exercise of the legal right and the
2 discharge. *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 54, 68-69
3 (Wash. 1991). Temporal proximity between the protected activity and the
4 discharge, when coupled with evidence of satisfactory work performance, supports
5 an assertion of retaliatory motive. *Wilmot*, 118 Wn.2d at 69; *see also Francom v.*
6 *Costco Wholesale Corp.*, 98 Wn. App. 845, 862 (Wash. App. Div. 3, 2000).

7 The documents filed by Mr. Thorson present a material question of fact as to
8 whether Mr. Thorson was non-communicative while he was out on leave and failed
9 to timely inform the County of the status of his injury and military service
10 commitments. *See, e.g.*, ECF No. 44-4 at 28-29. Because there are questions of
11 fact as to whether Mr. Thorson's work performance was satisfactory at the time of
12 his termination, the Court finds that summary judgment is inappropriate as to Mr.
13 Thorson's Industrial Insurance Act retaliation claim.

14 Accordingly, the Court **DENIES** Mr. Thorson's Motion for Summary
15 Judgment, **ECF No. 37**, and **WITHHOLDS RULING** on Mr. Thorson's

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1 Objections at **ECF No. 57**.

2 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
3 Order and provide copies to Counsel.

4 **DATED** this 22nd day of February 2012.

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6 *s/ Rosanna Malouf Peterson*
7 ROSANNA MALOUF PETERSON
8 Chief United States District Court Judge
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